

ASSEMBLY BILL

No. 404

Introduced by Assembly Member Eng

February 23, 2009

An act to amend Section 23701d of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 404, as introduced, Eng. Taxation: tax-exempt charitable organizations: administration.

The Corporation Tax Law, in modified conformity with federal income tax laws, exempts various types of organizations from state income taxes imposed by that law. Existing law allows organizations that have obtained a ruling or determination from the Internal Revenue Code that it is exempt from federal income taxes as an organization described in Section 501(c)(3) of the Internal Revenue Code to obtain exemption from state income taxes by submitting to the Franchise Tax Board a copy of the notification issued by the Internal Revenue Service approving the organization's tax-exempt status, as specified.

This bill would additionally exempt a subordinate organization that is included in a federal group exemption letter, provided the organization submits to the board a copy of the group exemption letter issued by the Internal Revenue Service and substantiation that it is included in the federal group exemption letter as a subordinate organization. This bill would require the board to issue an acknowledgment of an organization's exemption from state income taxes, as provided. This bill would also, if the board suspends or revokes the exemption of an organization, provide that the exempt status will not be reinstated until the organization applies to the Franchise Tax Board for exemption, and the

board issues a determination exempting the organization from state income taxes, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 23701d of the Revenue and Taxation
2 Code is amended to read:
3 23701d. (a) A corporation, community chest or trust, organized
4 and operated exclusively for religious, charitable, scientific, testing
5 for public safety, literary, or educational purposes, or to foster
6 national or international amateur sports competition (but only if
7 no part of its activities involved the provision of athletic facilities
8 or equipment), or for the prevention of cruelty to children or
9 animals, no part of the net earnings of which inures to the benefit
10 of any private shareholder or individual, no substantial part of the
11 activities of which is carrying on propaganda or otherwise
12 attempting to influence legislation, (except as otherwise provided
13 in Section 23704.5), and which does not participate in, or intervene
14 in (including the publishing or distribution of statements), any
15 political campaign on behalf of (or in opposition to) any candidate
16 for public office. An organization is not organized exclusively for
17 exempt purposes listed above unless its assets are irrevocably
18 dedicated to one or more purposes listed in this section. Dedication
19 of assets requires that in the event of dissolution of an organization
20 or the impossibility of performing the specific organizational
21 purposes the assets would continue to be devoted to exempt
22 purposes. Assets shall be deemed irrevocably dedicated to exempt
23 purposes if the articles of organization provide that upon
24 dissolution the assets will be distributed to an organization which
25 is exempt under this section or Section 501(c)(3) of the Internal
26 Revenue Code or to the federal government, or to a state or local
27 government for public purposes; or by a provision in the articles
28 of organization, satisfactory to the Franchise Tax Board; that the
29 property will be distributed in trust for exempt purposes; or by
30 establishing that the assets are irrevocably dedicated to exempt
31 purposes by operation of law. The irrevocable dedication
32 requirement shall not be a sole basis for revocation of an exempt

1 determination made by the Franchise Tax Board prior to the
2 effective date of this amendment.

3 (b) (1) In the case of a qualified amateur sports organization—

4 (A) The requirement of subdivision (a) that no part of its
5 activities involves the provision of athletic facilities or equipment
6 shall not apply.

7 (B) That organization shall not fail to meet the requirements of
8 subdivision (a) merely because its membership is local or regional
9 in nature.

10 (2) For purposes of this subdivision, “qualified amateur sports
11 organization” means any organization organized and operated
12 exclusively to foster national or international amateur sports
13 competition if that organization is also organized and operated
14 primarily to conduct national or international competition in sports
15 or to support and develop amateur athletes for national or
16 international competition in sports.

17 (c) (1) Notwithstanding subdivisions (a), (b), and (c) of Section
18 23701, an organization organized and operated for nonprofit
19 purposes in accordance with this section shall be exempt from
20 taxes imposed by this part, except as provided in this article or in
21 Article 2 (commencing with Section 23731), upon its submission
22 to the Franchise Tax Board of ~~a~~ *one of the following*:

23 (A) A copy of the ~~notification~~ *determination letter or ruling*
24 issued by the Internal Revenue Service ~~approving~~ *recognizing* the
25 organization’s ~~tax-exempt status pursuant to exemption from~~
26 *federal income tax under Section 501(a) of the Internal Revenue*
27 *Code, as an organization described in Section 501(c)(3) of the*
28 *Internal Revenue Code. The effective date of an organization’s*
29 *tax-exempt status for state income tax purposes pursuant to this*
30 *subdivision shall be no later than the effective date of the*
31 *organization’s tax-exempt status, under Section 501(c)(3) of the*
32 *Internal Revenue Code, for federal income tax purposes.*

33 (B) *A copy of the group exemption letter issued by the Internal*
34 *Revenue Service and substantiation that the organization is*
35 *included in the federal group exemption letter as a subordinate*
36 *organization.*

37 (2) *Upon receipt of the documents required in subparagraph*
38 *(A) or (B) of paragraph (1), the Franchise Tax Board shall issue*
39 *an acknowledgment that the organization is exempt from taxes*
40 *imposed by this part, except as provided in this article or in Article*

2 (commencing with Section 23731). The acknowledgment may
refer to the organization's recognition by the Internal Revenue
Service of exemption from federal income tax as an organization
described in Section 501(c)(3) of the Internal Revenue Code and,
if applicable, the organization's subordinate organization status
under a federal group exemption letter. The effective date of an
organization's exemption from state income tax pursuant to this
subdivision shall be no later than the effective date of the
organization's recognition of exemption from federal income tax
as an organization described in Section 501(c)(3) of the Internal
Revenue Code, or its status as a subordinate organization under
a federal group exemption letter, as applicable.

~~(2)~~

(3) If, for federal income tax purposes, an organization's
~~tax-exempt status~~ exemption from tax as an organization described
in Section 501(c)(3) of the Internal Revenue Code is suspended
or revoked, the organization shall notify the Franchise Tax Board
of the suspension or revocation, in the form and manner prescribed
by the Franchise Tax Board. Upon notification, the board shall
suspend or revoke, whichever is applicable, for state income tax
purposes, ~~an the organization's tax-exempt status granted pursuant~~
~~to exemption under paragraph (1) of this subdivision.~~

~~(3)~~

(4) This subdivision shall not be construed to prevent the
Franchise Tax Board from revoking the exemption of an
organization that is not organized or operated in accordance with
this chapter or Section 501(c)(3) of the Internal Revenue Code.

(5) *If the Franchise Tax Board suspends or revokes the
exemption of an organization pursuant to paragraph (3) or (4),
the exemption shall be reinstated only upon compliance with
Section 23701, regardless of whether the organization can establish
exemption under paragraph (1).*

(d) The Franchise Tax Board may prescribe rules and regulations
to implement this section.

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